

1 the time. Everything seemed to be going normally. I was
2 brand new at the firm. I didn't -- didn't want to make any
3 waves.

4 JUDGE SIPPEL: Well -- well, that's all. I mean,
5 factually that's the way it was.

6 THE WITNESS: Yes, that's the --

7 JUDGE SIPPEL: All right. Go on, Mr. Beckner.

8 BY MR. BECKNER:

9 Q All right. Mr. Lehmkuhl, as you mentioned in your
10 testimony, that I think in 1994, Liberty was operating under
11 some STAs. And in fact, I think you said that you filed for
12 renewal of some of those STAs --

13 A Yes.

14 Q -- in 1994. Is that right?

15 A Yes.

16 Q Okay. And I take it, those renewals were granted,
17 were they?

18 A Yes.

19 Q Okay. Can you recall when the last -- when
20 Liberty received its last STA? And I mean by that either a
21 renewal of an STA or a first-time STA in this period between
22 June '94 and let's say April '95?

23 A No, I don't recall specifically.

24 Q Okay. Now, you testified about your memorandum
25 that you prepared dated February 24th which says Liberty's

1 no longer operating under any STAs.

2 A Yes.

3 Q So did Liberty receive any STAs to your knowledge
4 between the date of this memorandum and, say, June 1st?

5 A No, not that I recall.

6 Q Okay.

7 JUDGE SIPPEL: Would you give that time frame a
8 little bit better now. What date are we talking about?

9 MR. BECKNER: Between February 24th, 1995 and June
10 1st, 1995.

11 THE WITNESS: Not that I recall.

12 BY MR. BECKNER:

13 Q Okay. Do you recall -- and I'm just trying to see
14 if I can focus your recollection here. Do you recall
15 whether or not Liberty received any STAs in either January
16 or February of 1995?

17 A Which type of STAs?

18 Q Either a first-time STA or a renewal of a
19 previously granted STA.

20 A I'm not -- certainly not a first-time STA. But
21 possibly a -- possibly a renewal STA, yes.

22 Q Okay. Would -- would there -- would Liberty have
23 received very many of these renewal STAs, I mean more than
24 two or three in the first couple of months of 1995?

25 A I really don't recall. I'd have to know -- I

1 don't recall how many applications I had filed to receive
2 those grants. But I think it was maybe less than five.

3 Q Now, in the preceding six months; that is, from
4 June through December of '94, would you say that Liberty was
5 receiving a large number of STAs, either first-time or
6 renewals? And by a large number, I would say more than ten.

7 A I don't believe there were any first-time.
8 Renewals, I would say, yes, more than ten for the renewals.

9 Q Okay. Well, I think you testified that with
10 respect to the grant of a license or a modification of a
11 license, that the FCC sent that grant directly to Liberty,
12 is that correct?

13 A Yes, the granted license was sent to Mr. Nourain.

14 Q Okay. And how did you learn about the fact that a
15 license grant was awarded to Liberty?

16 A Mr. Nourain would send it to me.

17 Q I see.

18 A Make a copy and send it to me.

19 Q Okay. Was there -- in those circumstances, was
20 there ever any discussion between you and Mr. Nourain about
21 what particular path or paths were covered by this grant?

22 A There may have been.

23 Q I mean, were there times when -- when he would ask
24 you to tell him -- or identify for him what particular path
25 or paths were covered by a particular grant that he had

1 received?

2 A I don't recall specifically. I think he -- he
3 certainly had the information to find that out.

4 Q But you don't recall whether or not he asked you
5 to help him out with that?

6 A No. I don't recall that specifically, no.

7 Q All right. Now, with respect to a grant of an
8 STA, is it your testimony that sometimes those grants went
9 from the FCC to you, and sometimes they went from the FCC to
10 Liberty?

11 A I believe that's what the case was, yes.

12 Q Okay. That was. Now, in the case where an STA
13 went to you, did you then forward that on to Liberty?

14 A I would have -- yes, I would have forwarded it to
15 Liberty.

16 Q Okay. And, again, as I asked you with respect to
17 the application -- the grant of an application, would there
18 sometimes be discussion between you and Mr. Nourain as to
19 what particular path or paths were covered by an STA grant?

20 A It's possible, although there were not too many
21 grants in this time period.

22 Q Okay. Now, in the circumstance where the
23 Commission sent an STA grant directly to Liberty, how did
24 you learn about that grant?

25 A I learned about it -- I would either learn about

1 it through the FCC's public notice or when Mr. Nourain would
2 send me the -- a copy of the license.

3 Q And in those times when you learned about an STA
4 grant being awarded through a public notice, did you make
5 any attempt to contact Mr. Nourain to verify with him that
6 he had received the grant or that he knew that he had it?

7 A I believe so.

8 Q Yes. So you made sure that he knew that he had an
9 STA?

10 A An STA?

11 Q Yes, an STA grant.

12 A STAs are not listed on the public notice. Did you
13 -- were you referring to --

14 Q The last three questions -- the last three
15 questions were about STAs.

16 A Oh, I'm sorry. I misunderstood your question. I
17 thought you were talking about licenses.

18 Q Well, let's go back. If I made a mistake, let me
19 fix it. With respect to STA grants --

20 A Yes.

21 Q -- all right. I believe you testified earlier in
22 direct that sometimes those grants were sent directly to the
23 client and sometimes they were sent to you.

24 A Yes, that's correct.

25 Q All right. And then I asked you in the instances

1 where an STA grant came to you, did you forward it to the
2 client?

3 A Yes. I would fax it to the client.

4 Q Okay. And then I asked you whether or not there
5 was ever any discussion between you and the client about
6 what path or paths were covered by a particular STA grant
7 that had just been awarded?

8 A No, not that I recall.

9 Q Okay. Now, in the circumstance where an STA grant
10 went to your client, how did you know that the client had
11 received the STA grant?

12 A I believe he would notify me. He would fax a copy
13 of it to me.

14 Q All right. And just to be clear here, the -- your
15 testimony is is that STA grants are not in the FCC public
16 notices.

17 A That's correct.

18 Q So the only way that you have of knowing about
19 them is either if you get them or get a copy of them.

20 A Yes, or by calling -- by calling Commission staff.

21 Q All right. Was there ever any circumstance when -
22 - when during this period, June 1994 through the middle of
23 April 1995, when you called the Commission staff to inquire
24 about whether or not an STA grant had been awarded to
25 Liberty?

1 A There may have been one or two occasions, yes.

2 Q Okay. Do you know why it is -- or what prompted
3 you to make those inquiries?

4 A No, I don't recall specifically. I would imagine
5 I was anxious to get -- you know, to make sure that the
6 grant -- that the STA was granted.

7 Q Do you know whether or not Mr. Nourain might have
8 asked you to make those inquiries?

9 A I don't believe so, no.

10 MR. BECKNER: All right. Your Honor, I'm at a
11 breaking point if you want to take a break.

12 JUDGE SIPPEL: Let me just be sure that I've got
13 this straight. You just asked him a line of questioning
14 about these STAs. As I understand your testimony, those
15 STAs that you just testified to had to do with STAs or
16 renewals of STAs that were not impacted by the -- the Time
17 Warner petitions.

18 THE WITNESS: That's correct.

19 JUDGE SIPPEL: So once the Time Warner petitions
20 came in -- and that's in January.

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: Now, we know that they were limited
23 at that time only to the hardwire issues.

24 THE WITNESS: Right.

25 JUDGE SIPPEL: Once that happened, STAs were not

1 even considered. Is that -- I mean, they were really --

2 THE WITNESS: That's correct.

3 JUDGE SIPPEL: -- they were off the screen.

4 THE WITNESS: That's correct.

5 JUDGE SIPPEL: And you knew why they were off the
6 screen.

7 THE WITNESS: Yes.

8 JUDGE SIPPEL: You know what I'm saying when I say
9 "off the screen"?

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: I mean, they just were not -- let's
12 not waste our time talking about them because we can't use
13 them. That was the --

14 THE WITNESS: Yes.

15 JUDGE SIPPEL: -- sum and substance of what your
16 thinking was and your understanding was. And that
17 information -- or that understanding -- same understanding
18 as far as you're concerned was also realized by Mr. Nourain.

19 THE WITNESS: Yes.

20 JUDGE SIPPEL: And it would have been about that
21 same time frame.

22 THE WITNESS: About that, yes.

23 JUDGE SIPPEL: January through March.

24 THE WITNESS: Yes.

25 JUDGE SIPPEL: So he knew that STAs were not in --

1 a viable option for anything that Liberty was going to do --
2 am I overstating it?

3 THE WITNESS: Well, yes. I mean, I don't really
4 know exactly what Mr. Nourain was thinking about --

5 JUDGE SIPPEL: Right. Okay. Okay. I'll withdraw
6 that question. You don't have to answer that question. But
7 he should have. I mean, all things being equal, the
8 reasonable client who was in this line of work would
9 understand that.

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: And it would probably go from Mr.
12 Nourain right up the line, wouldn't it?

13 THE WITNESS: Yes.

14 JUDGE SIPPEL: When I say up the line, I mean to
15 the top executives of the company.

16 THE WITNESS: I think so, yes.

17 JUDGE SIPPEL: Anything further? We're finished
18 with STAs then, right? And you say you're going to shift to
19 another --

20 MR. BECKNER: Yes.

21 JUDGE SIPPEL: -- line of questions?

22 MR. BECKNER: Yes, Your Honor. I am.

23 JUDGE SIPPEL: All right. Let's go off the record
24 for just a minute.

25 (A discussion was held off the record.)

1 JUDGE SIPPEL: We're in recess for lunch until
2 1:15.

3 (Whereupon, at 11:57 a.m., the hearing recessed to
4 reconvene at 1:15 p.m., this same day.)

5 //

6 //

7 //

8 //

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

23

25

23

24

2

1 the Reporter's exhibit.

2 THE WITNESS: Oh, thank you.

3 BY MR. BECKNER:

4 Q Okay. Do you have that in front of you, sir?

5 A Yes, I do.

6 Q Okay. Good. As far as you can recall, did you in
7 fact send copies of this memorandum to the individuals
8 identified here on the first page as Mr. Price, Mr. Nourain
9 and Mr. Thomas Courtney?

10 A Yes.

11 Q Okay. How did you decide to whom to send this
12 memorandum?

13 A These were I believe the people identified in
14 previous inventories.

15 Q All right. Do you have any understanding why it
16 would be appropriate to send a copy of this memorandum to
17 Mr. Courtney at COMSEARCH?

18 A Well, the -- the previous inventories had been
19 sent to him. And since at the time I believe he was
20 overseeing frequency coordination for Liberty at COMSEARCH,
21 I thought it was appropriate.

22 Q There wasn't any particular issue that you were
23 aware of involving COMSEARCH that this memorandum might have
24 related to?

25 A No.

1 Q Okay. This emission designator problem that you
2 referred to in your direct testimony, I take it it didn't --
3 it didn't have any relationship to the decision to send this
4 memorandum to Mr. Courtney?

5 A No.

6 Q Okay. Now, in a second paragraph in the
7 memorandum, you -- you mentioned the fact that apparently
8 certain applications had been pending for over two years.

9 A That's correct.

10 Q And -- and that date the filing had been granted,
11 at least as of the time you prepared this document, correct?

12 A That's correct.

13 Q Had these applications been the subject of
14 petitions to deny as far as you know?

15 A I don't believe so. There may have been one.

16 Q There may have been one that was the subject of
17 the petition to deny?

18 A It may have been granted about the same time as
19 the petition to deny was filed.

20 Q But as far as you know, was there any relationship
21 between petitions to deny filed by Liberty Cable -- I mean
22 filed by Time Warner or by Cablevision and the fact that
23 these applications that you're mentioning here on this
24 document took two years to be activated?

25 A No.

1 Q Do you have any believe as to why it was that
2 these applications you mentioned here took two years to get
3 processed?

4 A Yes.

5 Q What was that?

6 A It was the Commission's processing procedures,
7 from what I understand; it had to do with software and the
8 way that Liberty's applications were a square peg that
9 didn't fit in with the round hole of the Commission's
10 licensing procedures.

11 Q Okay. And while these applications were pending,
12 I take it from your memorandum that Liberty had been
13 operating under STAs for the paths that were covered by
14 those applications.

15 A Yes.

16 Q Okay. As of the date of the memorandum, did this
17 problem that you said you understood was responsible for the
18 two year delay, had that problem been solved as far as you
19 know or would it still have existed?

20 A I believe -- I'm not exactly sure. But I think
21 most of it had been solved.

22 Q Had you discussed with Mr. Nourain or anyone else
23 at Liberty anything in regard to the delay of these
24 applications or the reason for the delay of these
25 applications that are mentioned here on the first page of

1 the exhibit?

2 A Yes.

3 Q Okay. Just basically, if you could summarize what
4 it was that you told -- well, first, who did you discuss it
5 with? Mr. Nourain?

6 A Yes.

7 Q Okay. And basically summarize what it was that
8 you told Mr. Nourain about this.

9 A Basically what I just told you about the
10 Commission's processing procedures with respect to these. I
11 was not the first one to discuss this with Mr. Nourain
12 either.

13 Q Okay. And do you recall whether or not you
14 discussed this on more than one occasion with Mr. Nourain?

15 A I don't recall.

16 Q All right. Now, at the time that you prepared
17 this inventory, do you recall if there was any Liberty STA
18 request that was pending?

19 A No, I don't believe there was.

20 Q Okay. If such an STA request had been pending,
21 would you have indicated somewhere in the memorandum or the
22 attachments to it that fact?

23 A If I knew that, yes.

24 Q Okay. I'd like you to take a look at the second
25 page of the exhibit which -- which has a --

1 MR. BECKNER: As an aside, Mr. Begleiter, did your
2 contractor or somebody separately number the pages of these
3 exhibits the way that we did with ours?

4 MR. BEGLEITER: No.

5 MR. BECKNER: Okay. All right. So I'll just
6 refer to the pages by the production number if that's okay.

7 BY MR. BECKNER:

8 Q All right. The production number 16140, Mr.
9 Lehmkuhl, do you have that page in front of you?

10 A Yes.

11 Q Okay. There's a column there that says, "STA?"
12 What is that comment -- what does that column mean?

13 A That means -- that means to designate whether or
14 not an STA is in effect.

15 Q Okay. So that would refer to whether or not it
16 was operating under an STA and not whether or not an STA
17 request had been filed.

18 A Correct.

19 Q Okay. Now, I take it from your previous testimony
20 that you don't recall discussing Liberty/Bureau Exhibit 1 at
21 the company after February 24th, 1995.

22 A That's right. I don't -- I don't recall.

23 Q And I take it -- was there a conversation that you
24 might have had with Mr. Nourain after the date of this
25 memorandum in which he might have asked a question of you

1 which could have been answered by referring to this
2 memorandum? Do you remember him asking a question like
3 that?

4 A I mean, I'd rather not speculate. But I suppose
5 so. I mean, I don't know what --

6 Q But I take it that when he asked you that
7 question, you didn't comment about the fact that -- or even
8 ask him, well, did you get a -- did you look at the
9 memorandum I sent you at the end of February, you know, and
10 has that information in it.

11 A I don't recall him speaking to me and referring to
12 me -- referring to this document when he spoke to me.

13 Q Okay. We'll come back to that in a minute. I
14 mean, maybe -- I'm not sure that my question was clear. But
15 I think -- we'll just come back to it later. Now, I think
16 that you testified in direct that you had -- that you had --
17 about this emission designator problem that -- do you recall
18 that testimony about the emission designator --

19 A I don't recall it specifically. It was pretty
20 minor.

21 Q Well, let me ask you a few questions about the
22 emission designator problem. First, when were you aware, if
23 you remember, that there was such a problem?

24 A When one of the FCC staff people called me and
25 informed me that there was a problem.

1 Q Right. Okay. And you testified about that. I
2 don't recall whether you were able to say when that
3 telephone call from the FCC staff came to you.

4 A Yes, I don't recall.

5 MR. HOLT: Your Honor, Mr. Beckner, I believe he
6 said early March.

7 MR. BECKNER: Well, we'll get to that.

8 BY MR. BECKNER:

9 Q After the -- after that call came to you, did you
10 then report the call to Mr. Nourain?

11 A Yes, I believe I did.

12 Q So did you call up Mr. Nourain and say we've got a
13 problem with some of our applications?

14 A Yes.

15 Q Okay. And at the time of that call with Mr.
16 Nourain, did you discuss with him how you proposed to deal
17 with the problem?

18 A I don't recall the -- what I specifically said to
19 him. But, yes, it's fair to assume that -- that I would
20 have made arrangements to take care of it.

21 Q Okay. And did you tell him perhaps that you would
22 just have to file a modification to the -- to the
23 application to correct the incorrect designation?

24 A I don't recall I told him anything about that
25 because I think I -- I don't think I knew myself at that

1 point what had to be done.

2 Q In the conversation, did you discuss with him
3 whether or not this incorrect emission designation was in
4 your opinion going to have an effect on the processing of
5 the application?

6 A I think at that time I probably -- I don't think I
7 had any idea.

8 Q Do you recall whether it or not he asked you
9 whether it would have any effect on when the applications
10 were granted?

11 A No, I don't recall that.

12 Q And I take it in this conversation, there was no
13 mention made by either of you about whether or not in light
14 of the circumstances that you just learned of it might be
15 appropriate to ask for an STA for these paths.

16 A No.

17 Q Was that something that just didn't occur to you
18 or did you -- it occurred to you and you thought it wouldn't
19 be useful?

20 A I don't recall. I mean, I -- I don't think -- I
21 didn't see this as a -- as a big problem in the beginning.

22 Q Okay. Did you ever come to see it as a big
23 problem?

24 A Certainly.

25 Q When was that?

1 A When I found out to what extent this had -- when I
2 found out how many applications were affected by this
3 probably.

4 Q And when did that happen?

5 A Sometime later. I don't know, a week or two.

6 Q Okay. When you decided this was, to use your
7 term, "a big problem", did you call Mr. Nourain back and
8 tell him we now have a big problem?

9 A I don't recall -- I don't recall whether I called
10 him or not.

11 Q At some point whether you called him or he called
12 you, did you communicate your belief to him that this
13 emission designator situation had become or was a big
14 problem?

15 A I suppose at some point I did, yes.

16 Q And -- and when you -- when you communicated to
17 him, if you did, that it was a big problem, again, did you
18 say anything to him about what effect this might have on the
19 timing of any action on the applications that were affected
20 by this problem?

21 A I still did not know that at that time. So I
22 probably would not have.

23 Q Would not have what?

24 A Would not have communicated that to him.

25 Q Okay. And I take it again he did not ask you

1 about what consequences you thought might flow that you now
2 had this big problem.

3 A I don't recall.

4 Q Did there come a time when you actually took some
5 corrective action to deal with this emission designator
6 problem?

7 A Yes.

8 Q Okay. And was that on March 21st, 1995?

9 A Before that.

10 Q Okay. Tell me what you did before March 21st,
11 1995.

12 A I contacted the frequency coordinator and made
13 them aware of the problem. They told me that they were
14 aware of this problem that had apparently happened to other
15 people. This was in subsequent discussions I had with them
16 over the period of about a week. They were in contact with
17 Commission staff to resolve the problem, but were unable to
18 resolve the problem. So I -- I told them that we needed to
19 amend these.

20 Q Okay. And you're talking about the frequency
21 coordinator. Was that someone at COMSEARCH?

22 A That's correct.

23 Q All right. And you say this -- this was a couple
24 of weeks before --

25 A Yes.

1 Q -- you filed the amended applications?

2 A That's correct.

3 Q All right. And again, as I've asked you with
4 respect to these other pieces of information you received,
5 did you report to Mr. Nourain about your conversation with
6 the frequency coordinator?

7 A I believe I had, yes.

8 Q I what -- you testified that they had told you
9 that they had tried unsuccessfully to resolve it with the
10 FCC. Did they give you any kind of detail as to what
11 attempt they had made?

12 A They did at the time, but I really don't recall
13 what -- what it was.

14 Q In any event, I take it it was clear to you after
15 having that conversation with the frequency coordinator that
16 -- that you were going to have solve the problem.

17 A Yes, that's correct.

18 Q Okay. And -- and, again, I take it that you
19 reported this information to Mr. Nourain, that you were
20 going to have to solve the problem.

21 A I don't recall specifically saying that, but it's
22 possible.

23 Q In these -- in these conversations that you had
24 with Mr. Nourain about this -- about this emission
25 designator problem as it was unfolding as it were, did he

1 express or display to you, you know, any kind of anxiety or
2 concern about what consequences this might have for his
3 company's activities?

4 A I don't recall.

5 Q You don't recall him doing that?

6 A No.

7 MR. BECKNER: Okay. Now, I think we have copies
8 marked of this document that's -- that Mr. Begleiter brought
9 with him this morning. This is the March 21, 1995
10 transmittal from Mike Lehmkuhl with associated documents.
11 Does the Court Reporter --

12 JUDGE SIPPEL: No, you've got to give two copies
13 up to the Reporter.

14 MR. BECKNER: Okay.

15 JUDGE SIPPEL: All right. Let's go off the
16 record.

17 (Continued on next page.)

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

1 JUDGE SIPPEL: We are back on the record.

2 MR. BECKNER: I would just note for the record
3 that I have asked the court reporter to mark a document as
4 Time Warner/Cablevision Exhibit 37. It does not have
5 numbers on it, but it consists of a number of pages, the
6 first page of which is a copy of a letter, dated March 21,
7 1995, addressed to Microwave Branch, Wireless
8 Telecommunications Branch, Federal Communications
9 Commission, Attention: Ms. Bonnie Flynn.

10 And the last page of which, again, just for
11 identification, is -- appears to be a computer printout with
12 the heading, COMSEARCH, Page 1 of 3, and then, in
13 handwriting on the top left -- I am sorry, top right corner
14 are the words, Exhibit 3, Path A.

15 JUDGE SIPPEL: The cover letter is, you said,
16 dated March 21, 1995, a two-page letter from Mr. Lehmkuhl.
17 This will be marked by the reporter for identification,
18 then, as TW/CV Number 37 for identification.

19 (The document referred to was
20 marked for identification as
21 TW/CV's Exhibit 37.)

22 Is there any objection to its receipt into
23 evidence?

24 MR. BEGLEITER: None, Your Honor. I would just
25 make a note that it is a public record document.

1 JUDGE SIPPEL: All right.

2 MR. BECKNER: And as we determined this morning,
3 it is not a complete document.

4 JUDGE SIPPEL: Not a complete document. All
5 right, we have that for the record. There being no
6 objection, it is received into evidence at this time as
7 TW/CV Exhibit Number 37.

8 (The document referred to was
9 received into evidence as
10 TW/CV Exhibit 37.)

11 And I am going to ask the reporter to hand up one
12 copy so that the witness can refer to it.

13 THE WITNESS: Thank you.

14 (Pause.)

15 FURTHER CROSS EXAMINATION

16 BY MR. BECKNER:

17 Q All right, Mr. Lehmkuhl, do you now have in front
18 of you what has been marked as Time Warner/Cablevision
19 Exhibit 37?

20 A Yes.

21 Q Okay. First, can you just identify that the cover
22 letter is, in fact, a copy of the cover letter with your
23 signature on it?

24 A Yes, it is.

25 Q Okay. And do you recall sending this to the FCC